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Attorney for Defendants,  
Mitchell Clout and Koil Content Creation Pty Ltd.

**UNITED STATES DISTRICT COURT**  
**CENTRAL DISTRICT OF CALIFORNIA**

THAT ONE VIDEO ENTERTAINMENT, LLC, a California limited liability company	)	Case No.: 2:23-CV-02687 SVW (JCx)
	)	
	)	<b>DECLARATION OF MITCHELL CLOUT</b>
Plaintiff	)	
	)	
vs.	)	[Assigned to the Hon. Stephen V. Wilson]
KOIL CONTENT CREATION PTY LTD., an Australian proprietary limited company doing business as NOPIXEL;	)	Ctrm 10A]
MITCHELLE CLOUT,	)	
an individual; and DOES 1-25, inclusive,	)	
	)	
	)	
Defendant(s).	)	
	)	
	)	

**DECLARATION OF MITCHELL CLOUT**

1. I, Mitchell Clout, am a citizen of Australia, over the age of eighteen, and have personal knowledge of the facts stated herein,

1 unless stated on information and belief, and if called upon to  
2 testify to those facts I could and would competently do so as set  
3 forth herein.

- 4 2. I am the owner and Director of Koil Content Creation Pty Ltd  
5 (Koil”) now known as NoPixel Studios Pty Ltd, which is a  
6 community of content related servers known as NoPixel, and  
7 which is a collection of multiplayer content related servers that  
8 allow both members of the private community to play on their  
9 private servers, and also offers a variety of other public servers to  
10 the public audience.
- 11 3. I own 100% of Koil.
- 12 4. I formed Koil in 2016. When it first started, I was the only  
13 developer. After about 18 months, other developers began asking  
14 to help develop new mod servers and I let them do so. From its  
15 inception, Koil was using the XenForo software to run the  
16 NoPixel forum.
- 17 5. In 2020, Danny Tracey acquired an account on the NoPixel server.  
18 He joined as an unpaid volunteer.
- 19 6. At this time, Mr. Tracey, like all others before and after him, were  
20 required to agree to the community's “terms and rules” (“Terms of  
21 Service” or “Terms”). A true and correct copy of the Terms are  
attached hereto as Exhibit “1.”
7. Those terms, which remained in place throughout Mr. Tracey’s  
tenure, specified that any and all content creators creating content  
for or in the NoPixel servers granted Koil a “non-exclusive,  
permanent, irrevocable, unlimited license to use, publish, or  
re-publish” Content in connection with the services they provided,  
but that they would retain copyright over the Content. “Content”

1 is defined in the terms of service as “All content you submit,  
2 upload, or otherwise make available to the Service.”

3 8. The Terms of Service further states that Koil may “remove or  
4 modify any Content submitted at any time, with or without cause,  
5 with or without notice; and that Koil may terminate “access to all  
6 or any part of the Service at any time, with or without cause, with  
7 or without notice.

8 9. Mr. Tracey agreed to the terms of service at the time he joined.  
9 Attached hereto as Exhibit “2” is a true and correct copy of the  
10 record showing Mr. Tracey agreement to the terms and conditions.  
11 I obtained this document by going to the administration page for  
12 the XenForo forum which lets me see the status of all persons who  
13 have an account on the NoPixel Server.

14 10. At no time did Koil or NoPixel, or the Terms, ever make any  
15 distinction as to whom the Terms applied. They applied to all  
16 content uploaded or submitted by those providing said content,  
17 regardless of whether they were “developers”, “players” or  
18 otherwise. At no time was there ever a “separate” or “more  
19 formal” process by which developers were subject to any other  
20 terms. These are the terms that I intended all persons who signed  
21 up to provide content to the NoPixel server to abide by.

11. Regarding those contributions, it is my understanding, based on  
my review of the Complaint, that either TOVE or Mr. Tracey are  
claiming that the code that Mr. Tracey wrote for the NoPixel  
server is a “joint work” as that term has been explained to me  
under United States Copyright laws and that either Mr. Tracey or  
TOVE is a “joint author” of the code. This is untrue. I have never  
intended that Mr. Tracey or TOVE to be a “joint author” of the

1 NoPixel code. That is why the terms of service expressly state  
2 that all the contributors continue to fully own the code that they  
3 submit, they are just providing Koil with a license to use the code.  
4 I have never told Mr. Tracey or TOVE that I considered them to  
5 be joint authors, and prior to this lawsuit, Mr. Tracey never told  
6 me that he considered himself or TOVE to be a joint author. Had  
7 he ever said anything like that to me, I would have immediately  
8 told him that was not the case so that there would be no confusion.

9 12. In fact, I have never had any agreement whatsoever with TOVE.

10 Nor have I had any communication with TOVE, whether orally or  
11 in writing; and I was unaware of their existence or alleged  
12 involvement/ownership in any content until this lawsuit. The only  
13 agreement I had with Mr. Tracey in connection with ownership or  
14 licensing of the content is contained within the Terms.

15 13. In that regard, the contributions made by Mr. Tracey were part of a  
16 much larger community of work contributed by over a hundred  
17 other developers. In other words, Mr. Tracey was only one of  
18 many developers that contributed work to the NoPixel servers,  
19 with all said work incorporated into the work with the content  
20 provided by all developers.

21 14. Further, because there were contributions from dozens of  
developers, I and Koil were responsible for overseeing and  
coordinating the work and content submissions. In fact, Mr.  
Tracey's contributions to the overall work contained on the servers  
was less than one percent of the total code.

15. I am the sole owner of Koil, and I have always been and continue  
to be the person who is responsible for what is put on the NoPixel  
server. It was I and Koil, and not Mr. Tracey, that supervises and

1 controls the work, its use and exploitation on the servers. I have  
2 the final say on everything that is added to the server.

3 16. Contrary to TOVE's claims, Mr. Tracey was not the "lead  
4 developer," nor was he responsible for managing the work of other  
5 developers or handling technical operations and infrastructure  
6 development. He did deploy code, fix bugs, and assist in ensuring  
7 the server ran properly, and he ran the infrastructure side of the  
8 development (but not development of the game). All of Mr.  
9 Tracey's work was ultimately subject to the direction of Koil, who  
10 remained responsible for coordinating, overseeing and ultimately  
11 implementing the contributions made by the dozens of deployed  
12 developers. While it is true that Mr. Tracey did aid in building  
13 in-game mechanics and reviewing development ideas, that in no  
14 way made Mr. Tracey the "lead" developer or anything other than  
15 one of many contributors.

16 17. And Mr. Tracey was certainly not, at any time or in any way, the  
17 "primary contributor to the back-end source code of the NoPixel  
18 Server." His work was a small percentage of the overall work  
19 performed by many, many, other developers and it was always  
20 under my management and control. .

21 18. During the period that Mr. Tracey was working for Koil, there  
were approximately 10 other salaried developers working for Koil  
on the NoPixel server.

19. Mr. Tracey was never credited as a co-author of the server, nor  
were any of the other developers. The credited owner of the  
NoPixel server is Koil.

20. I have also been made aware that Mr. Tracey and TOVE claim the  
nature of their claimed work was to build the payment processing

1 system. Nothing could be further from the truth. In fact, at all  
2 times, even before Mr. Tracey began making these alleged  
3 contributions, Koil utilized the third-party platform provider  
4 Tebex to process payments. The only work Tracey performed,  
5 therefore, was limited to creating some additional code to  
facilitate interaction with the Tebex payment platform.

6 21. And the agreement Koil had for that work was never with TOVE.

7 At no time, ever, did I enter into any agreement for TOVE to “loan  
8 out” the services of Mr. Tracey to Koil. At no time was I ever  
9 informed by Mr. Tracey or TOVE or anyone else that he was  
10 performing said work for TOVE or on TOVE’s behalf. The first I  
11 heard of this was when the claims in this case were made. Neither  
did I ever enter into a contract to pay TOVE 50% of NoPixel’s  
revenue.

12 22. Further to the foregoing, the only arrangement Koil had was with  
13 Mr. Tracey, and Mr. Tracey alone. In fact, for these services Koil  
14 agreed to compensate Mr. Tracey, and only Mr. Tracey, who was  
15 paid directly. At no point did Koil ever pay TOVE or was I aware  
16 of their existence, save for two invoices that Mr. Tracey submitted  
17 for payment that had TOVE’s email on it. Still, Mr. Tracey  
18 immediately informed me those invoices, which I paid, were  
19 submitted in error; after which the payments were reversed, new  
invoices submitted and were paid. All such payments, without  
exception, were made to Mr. Tracey’s personal PayPal account  
(D@nny.co).

20 23. The foregoing payments began in May 2021, when we started  
21 paying Mr. Tracey directly (via deposits to his personal PayPal  
account) totalling approximately \$10,000.00 per month. At no

1 point did Mr. Tracey or TOVE ever inform me that Mr. Tracey  
2 began working for TOVE and that payments should be made to  
3 TOVE, rather than Mr. Tracey.

4 24. But to be clear, Koil's agreement to start paying Mr. Tracey was  
5 not due to the alleged "commercial success" of Mr. Tracey's  
6 contributions. Rather, it was to fairly compensate Mr. Tracey for  
7 his work. Period. In fact, the commercial success of the NoPixel  
8 servers was because of the game itself and the people (including  
9 many very famous streamers) who used NoPixel and the playable  
10 modification made by the dozens of contributors, and not because  
11 Mr. Tracey made a small contribution toward facilitating the  
12 payment processing.

13 25. Significantly, at no time did I or Koil ever agree to "make Mr.  
14 Tracey a 50% partner in the NoPixel Server." In fact, that is  
15 demonstrably false. What we did agree to was to give Mr. Tracey  
16 a revenue share on just four of the many NoPixel Servers. Namely,  
17 the priority queue sales of the White Priority Server, the India  
18 Server, the Spain Server and the South America Server only while  
19 he was working for NoPixel and delivering the promised products,  
20 helping the infra team and also developing 4 mods monthly, one  
21 including Red Dead Redemption which he never completed.. That  
was it. And, while this agreement was in writing on Discord, there  
is no written or oral agreement with anyone, at any time, that Koil  
would pay Tracey (or TOVE) on 50% of all servers or otherwise  
make him a "partner."

26. In addition to the foregoing, I wish to address the claim, as stated  
in Plaintiff's Separate Statement of Undisputed Facts, that Mr.  
Tracey was a "talented" developer and that I "defamed" him. First,

1 Mr. Tracey was serviceable as a developer but no more talented  
2 than the dozens of other developers that were working for Koil.  
3 More importantly, however, at no time did I ever “defame” Mr.  
4 Tracey.

5 I declare under penalty of perjury under the laws of the State of  
6 California that the foregoing is true and correct.

7 Executed this \_\_18th\_\_ day of August 2024 in \_Australia\_\_\_\_\_.

8 By:  \_\_\_\_\_

9 Mitchell Clout  
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# EXHIBIT 1

[Home](#) [Donate](#) [Forums](#) ▼[Log in](#) | [Register](#)[Register](#)

Welcome Guest, to NoPixel's Website.

Standard Whitelisting is currently: **Closed!**

Donator Whitelisting is currently: **Open! (Roughly 7-10 Days)**

Please pay attention to the forums and instructions given, donators still must apply like normal, they are just processed faster.

The process can be found here: <https://www.nopixel.net/upload/index.php?threads/civilian-application-template.116232/>

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# EXHIBIT 2



Dw

Apr 22, 2020

Field name:

Accepted terms and rules

Old value:

New value:

Apr 22, 2020 at 4:43 PM

Field name:

Accepted privacy policy

Old value:

New value:

Apr 22, 2020 at 4:43 PM

Log out v2.1.7